UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,165	10/17/2001	Steve Dispensa	1585	7084

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EXAMINER
CLARK, ISAAC R

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/981,165	DISPENSA ET AL.
	Examiner	Art Unit	
	Isaac R Clark	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 October 2001*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 April 2002* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some * c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
          application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
     Paper No(s)/Mail Date *01/30/2003*.

4)☐ Interview Summary (PTO-413)
     Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

U.S. Patent and Trademark Office

PTOL-326 (Rev. 1-04)   Office Action Summary   Part of Paper No./Mail Date 01092005

DETAILED ACTION

1.   Claims 1-24 are presented for examination.

Priority

2.   The applicant claims priority under 35 USC § 119(e) from Provisional Application
No. 60/241,048 filed 10/17/2000.

Drawings

3.   The Office acknowledges the receipt of drawings submitted on 03/21/2002.

4.   The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5)
because they include the following reference character(s) not mentioned in the
description:

        a.   Reference character 465, 475, 470, 480 and 495 in Fig. 4.

5.   Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to
the specification to add the reference character(s) in the description in compliance with
37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the
application. Any amended replacement drawing sheet should include all of the figures
appearing on the immediate prior version of the sheet, even if only one figure is being
amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the
page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing
figures. If the changes are not accepted by the examiner, the applicant will be notified
and informed of any required corrective action in the next Office action. The objection to
the drawings will not be held in abeyance.

6.   The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference character 610 (page 12, line 10, and page 13, line 25).

7.   Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

8.   The disclosure is objected to because of the following informalities:

a. On Page 14, line 11, Fig. 1 is described as showing customer premises 600, 610 and 620. Reference characters 610 and 620 are not shown in Fig. 1. Reference character 620 is used to designate a transceiver in Fig. 6.

b. On Page 20, lines 22, 24 and 25, Fig. 5 is described as showing base antenna 540. The antenna is labeled with reference character 160. Reference character 540 is not shown in Fig. 5. Reference character 540 is shown in Fig. 14.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10.   Claims 1, 3, 6, 9, 11, 14, 17, 19, and 22 are rejected under 35 U.S.C. 102(e) as

being anticipated by Tams et al. (US Patent 6,327,620, filed 8/10/1998, hereinafter

Tams).

11.   As per claim 1, Tams discloses a method of operating a performance

management system (col. 5, lines 51-53), the method comprising:

generating and transmitting a first instruction for a Remote Monitoring (RMON)

probe (col. 6, lines 17-20) to request RMON information (col. 10, lines 54-56:

management system commands probe to collect data in a format);

receiving and storing the RMON information in memory in the performance

management system (col. 12, lines 17-20);

generating and transmitting a second instruction for an RMON manager to

request the RMON information (col. 12, lines 40-44);

receiving and storing the RMON information in the memory in the performance

management system (col. 12, lines 44-50);

generating and transmitting a third instruction for an RMON database to request

the RMON information (col. 12, lines 66-67: generate query for a database containing

RMON information); and

receiving and storing the RMON information in memory in the performance

management system (col. 13, lines 1-18).

12.   As per claim 3, Tams discloses the method of claim 1 wherein the RMON

information comprises application layer information (col. 9, lines 15-21; col. 10, lines 62-

64).

13.   As per claim 6, Tams discloses the method of claim 1 wherein the RMON

information comprises a number of bytes transmitted (col. 17, lines 1-20).

14.   As per claims 9, 11, and 14, claims 9, 11, and 14 describe a software product

storing instructions to carry out the method described in claims 1, 3, and 6 respectively.

Claims 9, 11, and 14 are rejected for the same reasons as claims 1, 3, and 6.

15.   As per claims 17, 19, and 22, claims 17, 19, and 22 describe an apparatus

adapted to carry out the method described in claims 1, 3, and 6 respectively. Claims

17, 19, and 22 are rejected for the same reasons as claims 1, 3, and 6.

Claim Rejections - 35 USC § 103

16.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

17.   Claims 2, 4, 5, 10, 12, 13, 18, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tams et al. (US Patent 6,327,620, filed 8/10/1998, hereinafter Tams) in view of Abdelnour et al. (US Patent 6,112,241, filed 10/21/1997, hereinafter Abdelnour).

18.   As per claim 2, Tams fails to explicitly teach the method of claim 1 wherein the RMON information comprises datalink layer information.

19.   Abdelnour teaches a performance management system wherein the RMON information comprises datalink layer information (col. 12, lines 53-57).

20.   It would have been obvious to one of ordinary skill in this art at the time the invention was made to combine the teaching of Tams and Abdelnour to collect datalink layer information form a managed network because they both deal with using gather statistics on network performance using RMON probes. Furthermore, the teaching of Abdelnour to modify the performance management system taught by Tams to collect datalink and higher layer level statistics would provide for more informed network management by providing a more complete picture of network behavior (See Tams col. 2, lines 5-10, and Tams, col. 12, lines 56-60).

21.   As per claim 4, Tams fails to explicitly teach the method of claim 1 wherein the RMON information is based on a media access control address.

22.   Abdelnour teaches performance management system wherein the RMON information is based on a media access control address (col. 14, Table 5 and Table 6: collected statistics include hosts and matrix statistics which are based on media access control addresses).

23.   It would have been obvious to one of ordinary skill in this art at the time the invention was made to combine the teaching of Tams and Abdelnour to collect RMON information based on a media access control address because they both deal with using gather statistics on network performance using RMON probes. Furthermore, the teaching of Abdelnour to modify the performance management system taught by Tams to collect media access control based information along with application layer information would provide for more informed network management by providing a more complete picture of network behavior (See Tams col. 2, lines 5-10, and Tams, col. 12, lines 56-60).

24.   As per claim 5, Tams fails to explicitly teach the method of claim 1 wherein the RMON information comprises a number of users.

25.   Abdelnour teaches performance management system wherein the RMON information comprises a number of users (col. 13, line 31: statistics includes ActiveStations).

26.   It would have been obvious to one of ordinary skill in this art at the time the invention was made to combine the teaching of Tams and Abdelnour because they both deal with using gather statistics on network performance using RMON probes. Furthermore, the teaching of Abdelnour to modify the performance management system taught by Tams to collect number of users information would provide for more informed network management by providing a more complete picture of network behavior (See Tams col. 2, lines 5-10, and Tams, col. 12, lines 56-60).

27.   As per claims 10, 12 and 13, claims 10, 12 and 13 describe a software product

storing instructions to carry out the method described in claims 2, 4, and 5 respectively.

Claims 10, 12 and 13 are rejected for the same reasons as claims 2, 4 and 5.

28.   As per claims 18, 20, and 21, claims 18, 20, and 21 describe an apparatus

adapted to carry out the method described in claims 2, 4 and 5 respectively. Claims 18,

20, and 21 are rejected for the same reasons as claims 2, 4 and 5.

29.   Claims 7, 8, 15, 16, 23, and 24 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Tams et al. (US Patent 6,327,620, filed 8/10/1998, hereinafter Tams)

in view of Fletcher et al. (US Patent 6,363,477 issued 08/28/1998, hereinafter Fletcher).

30.   As per claim 7, Tams fails to explicitly teach the method of claim 1 wherein the

RMON information comprises download speed.

31.   Fletcher teaches a performance management system computing download

speed from network and application layer information along with time stamps to

determine file transfer or download speed (col. 15, lines 34-40: correlating packets

using protocol layer information, col. 16, lines 45-55: calculating download speed).

32.   It would have been obvious to one of ordinary skill in this art at the time the

invention was made to combine the teaching of Tams and Fletcher to collect RMON

information based on a media access control address because they both deal with

using gather statistics on network performance using network and application layer

statistics. Furthermore, the teaching of Fletcher to modify the performance

management system taught by Tams to compute download speeds allows monitoring

system performance for compliance with service agreements which guarantee transfer rates (See Fletcher, col. 5, lines 47-42).

33. As per claim 8, Fletcher and Tams as applied to claim 7 above teach the method of claim 1 wherein the RMON information comprises bytes per second. It would have been obvious to one of ordinary skill in this art at the time the invention was made to that the transfer rate could equivalently be expressed in bits per second.

34. As per claims 15 and 16, claims 15 and 16 describe a software product storing instructions to carry out the method described in claims 7 and 8 respectively. Claims 15 and 16 are rejected for the same reasons as claims 7 and 8.

35. As per claims 23 and 24, claims 23 and 24 describe an apparatus adapted to carry out the method described in claims 7 and 8 respectively. Claims 23 and 24 are rejected for the same reasons as claims 7 and 8.

Conclusion

36. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents and publications are cited to further show the state of the art with respect to "Remote monitoring information management".

i.	US 6,628,304	Mitchell et al.	User interface for monitoring network
ii.	US 5,862,335	Welch et al.	File transfer rate monitoring
iii.	US 6,269,330	Cidon et al.	RMON based network management system

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac R Clark whose telephone number is (571)272-3961. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A Follansbee can be reached on (571)272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IRC

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